

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

26400

FILE: B-209776

DATE: September 29, 1983

MATTER OF: Ocean Data Equipment Division of Data
Instruments, Inc.

DIGEST:

1. Protest filed after date for receipt of initial proposals that agency should have assured that all offerors had access to a component specified in the solicitation is untimely. Protester was not lulled by agency into abandoning its protest by agency assurances that component manufactured by the protester would be considered equal to the specified component as record shows that agency only agreed to evaluate protester's component and did so, finding it acceptable but not assigning it as high a score as the specified component.
2. GAO will not reevaluate proposals or substitute its judgment for that of agency evaluators, who have considerable discretion. Rather, GAO will examine record to determine whether judgment of evaluators was reasonable and in accord with evaluation criteria listed in solicitation.
3. Procuring agency's assessment of relative risk associated with the various elements of proposals is unobjectionable where these elements reasonably relate to the evaluation criteria set forth in the RFP.
4. Agency determinations of price realism are judgmental in nature and determination that a proposed price is unrealistically low is not subject to objection unless it is clearly shown to be unreasonable. Determination that price, which is less than half of agency estimate and which is substantially lower than all other proposed prices is unrealistic, appears to be reasonable despite offeror's assertion that it could perform the work at its offered price.

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5. Agency's decision to base point scoring of cost proposals on lowest realistic price, rather than lowest price, is not objectionable where such an approach avoids what might otherwise have been a misleading result and otherwise was consistent with evaluation criteria set forth in solicitation.

Ocean Data Equipment Division of Data Industries, Inc. protests the award of a contract to Advanced Systems Development, Inc. (ASD) for sonar testing sets under request for proposals No. N00024-82-R-6189(Q) issued by the Naval Sea Systems Command. Ocean Data complains that the agency unlawfully acquiesced in a component supplier's refusal to provide the protester with a component critical to its proposed system and improperly evaluated proposals by using factors not announced in the solicitation and by erroneously scoring Ocean Data's technical and price proposals.

We dismiss the protest in part and deny it in part.

This solicitation sought fixed-price offers for 21 sonar testing sets, supporting services and data, with an option for 17 additional units. The specifications stated that one component of the test set, the signal detector, must be a "Dranetz Model 3100 or equivalent." The solicitation also provided that award would be based "primarily on the highest technical competence, as exhibited by the technical proposals and the factors of evaluation" and listed the following technical evaluation factors in descending order of importance: (1) technical understanding; (2) program understanding; (3) resources; (4) experience; (5) management; (6) organization; and (7) project control. The solicitation further indicated that price would also be evaluated.

Prior to the closing date for submission of initial proposals, Ocean Data contacted the Navy and indicated that it had been unable to obtain a quote from Dranetz for the signal detector. The agency then unsuccessfully attempted to convince Dranetz to supply the item to Ocean Data. After informing Ocean Data that it could not compel Dranetz to supply the detector, the agency informed Ocean Data that it would consider the firm's own signal detector.

The Navy received five proposals on the date set for the receipt of initial proposals. After the initial evaluation, the agency decided to conduct negotiations with all

five offerors. The agency then requested all offerors to submit best and final offers. After receipt of these offers, agency evaluators determined that additional discussions would be required. Discussions were thus reopened with all offerors, and the agency requested another set of best and final offers which it evaluated and scored with the following result:

| | <u>Proposed Price</u> | <u>Technical Score</u> | <u>Cost Score</u> | <u>Total Score</u> |
|----------------------------------|---------------------------|----------------------------|-----------------------|------------------------|
| ASD | \$1,805,748 | 52 | 30 | 82 |
| Ra-Nav | | | | |
| Laboratory | \$1,876,948 | 50 | 28 | 78 |
| Metric Systems | \$1,970,352 | 47 | 24 | 71 |
| Ocean Data | \$1,000,689 | 38 | 30 | 68 |
| Technology Dev. of California | \$2,813,397 | 51 | 0 | 51 |

The Navy's evaluation summary indicated that Ocean Data's low technical score was due in part to the evaluators' judgment that Ocean Data would have problems developing its own signal detector and generator in time to meet the solicitation's delivery requirements. Further, the evaluators noted that Ocean Data's proposal did not adequately discuss system integration; system software, particularly the "PROM problem"; and potential difficulties in using a specified IEEE-488 bus.¹ The evaluators concluded that there was only a "remote possibility" that Ocean Data could successfully perform the contract. In addition, the evaluators determined that Ocean Data's price was unrealistically low, and while they awarded Ocean Data a score of 30 under the price factor, they also awarded the same score to ASD whose price, more than \$800,000 higher, was considered the lowest realistic price. The evaluators then conducted an additional evaluation to determine whether ASD's higher technical score justified award to that firm notwithstanding Ocean Data's lower price. The evaluators decided that ASD's technical superiority justified the higher price and thus award was made to that firm.

Ocean Data complains that the Navy should have taken corrective action when that firm informed the agency that Dranetz refused to supply Ocean Data with the signal detectors. The protester states that the Navy should have compelled Dranetz to deal directly with Ocean Data or

¹ A device which electrically connects system components.

should have purchased the detectors from Dranetz and supplied them to all competitors as Government Furnished Equipment (GFE). Further, Ocean Data asserts that it was led to believe that its own signal detector would be considered equivalent to Dranetz' detector but that the agency unfairly downgraded its proposed approach as risky because it offered its own detector rather than the Dranetz unit. In this regard, the protester also contends that the evaluation was improper because risk to the Government was taken into account, although it was not identified in the solicitation as an evaluation factor. It also argues that the Navy improperly downgraded its proposal in several areas. Finally, Ocean Data asserts that price was not given its proper weight in the award selection because (1) its proposed price was improperly determined to be unrealistically low and (2) the agency used an improper undisclosed price weighting formula which did not conform to the solicitation's evaluation scheme.

Untimely Issue

The agency argues that Ocean Data's contention that the Navy should have assured that all offerors had access to Dranetz signal detectors is untimely under our Bid Protest Procedures, 4 C.F.R. Part 21 (1983), and should not be considered since it was not raised prior to the closing date for receipt of initial proposals. The protester, on the other hand, maintains that its protest of the Navy's handling of the Dranetz matter is timely. It states that the agency lulled Ocean Data into not protesting prior to submitting its proposal with assurances that it would consider Ocean Data's detector to be equal to that made by Dranetz, when in fact the agency improperly downgraded the protester's proposal because of perceived risks associated with Ocean Data's proposed detector.

The Navy denies that it ever assured Ocean Data that its detector would be considered equal to the Dranetz product. The Navy states that it told Ocean Data only that the firm need not propose using the Dranetz detector, but could instead offer its own, which the Navy would evaluate for compliance with solicitation provisions. We are inclined to accept the Navy's statements, since it simply is not logical that the Navy, prior to having any information on Ocean Data's own unit, which the record indicates would result from modifications to an existing product, would declare its intention to view that unit as equal to the Dranetz model. Moreover, Ocean Data's own correspondence with the Navy--which includes such statements as "[our

product] need not be an equal to the [Dranetz] 3100 as long as it meets the system performance specifications of [the solicitation]"--indicates Ocean Data's own understanding that its equipment would have to meet the specifications.

Therefore, we think Ocean Data simply was in a situation where it either had to take a chance on the acceptability of its own equipment or protest what it saw as the agency's improper refusal to have the Dranetz product made available; we do not view the agency as having lulled Ocean Data into abandoning its right to protest. Since Ocean Data's complaint in this regard concerned an alleged defect in the solicitation process, it should have been raised prior to the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(b)(1). Since the protest was not filed until several months later, this complaint is untimely and we will not consider it.

Technical Evaluation

The evaluators found the Ocean Data detector to be technically acceptable, but they did not rate it as highly as they did the Dranetz detector. In large measure this was due to the evaluators' judgment that Ocean Data's plan to develop its own detector and generator constituted a high risk because such a development effort could easily take 2 years and the firm did not explain how it would build its own components. This appears to be a reasonable conclusion, and thus we have no basis to object to it. While the protester complains that risk was improperly evaluated because it was not set forth as an evaluation factor, it is well settled that only the major evaluation factors applicable to a procurement need be set out; sub-factors, or other aspects of the major criteria, need not be specifically set forth in the solicitation provided they are logically and reasonably related to or encompassed by the stated evaluation factors. Columbia Research Corporation, 61 Comp. Gen. 194 (1982), 82-1 CPD 8. Risk is a factor which we have recognized as reasonably related to the type of technical evaluation concerns involved here and as an appropriate element for consideration in proposal evaluation. See Teledyne Ryan Aeronautical, 56 Comp. Gen. 635 (1977), 77-1 CPD 352; B-171349, November 17, 1971. We believe that the Navy's risk assessment here clearly was related to the listed evaluation factors and therefore was proper.

Ocean Data also contends that the agency improperly downgraded its proposal in the areas related to cable

connections, IEEE-488 Bus, software, configuration management, logistic support, purchasing and manufacturing plans regarding first article production, test plan and proposed personnel. In each of these areas, Ocean Data responds to the evaluators' criticism of its proposal by stating that its discussion of the area was adequate or that the criticism has no rational basis. The Navy maintains that the treatment in Ocean Data's proposal of the particular area was inadequate or unclear.

For example, the evaluators stated that the protester's proposal failed to recognize problems associated with cable connections, IEEE-488 Bus and software. Ocean Data contends that cable connections and software problems were specifically treated in its proposals and argues that the IEEE-Bus is "a commonly used device in the industry whose problems and shortcomings are evident to anyone with rudimentary experience." The agency replies that while Ocean Data did provide some information in its proposal regarding cable connections and software, it failed to address many major problems so as to indicate that it had an in-depth understanding of these areas. Further, the agency maintains that the IEEE-488 Bus is not a simple area and states that it cannot be sure that the offeror is aware of specific problems or difficulties in an area unless they are addressed in that offeror's proposal.

The determination of the relative merits of a proposal, particularly with respect to technical considerations, is primarily a matter of administrative discretion. Zuni Cultural Resource Enterprise, B-208824, January 17, 1983, 83-1 CPD 45. Our function is not to evaluate anew the proposals submitted and make our own determination as to their relative merits. Houston Films, Inc. (Reconsideration), B-184402, June 16, 1976, 76-1 CPD 380. That function is the responsibility of the contracting agency which must bear the burden of any difficulties resulting from a defective evaluation. Macmillan Oil Co., B-189725, January 17, 1978, 78-1 CPD 37. Thus, procuring officials enjoy a reasonable degree of discretion in evaluation of proposals and the exercise of that discretion will not be disturbed unless it is shown to be arbitrary. Piasecki Aircraft Corporation, B-190178, July 6, 1978, 78-2 CPD 10. The fact that the protester does not agree with the agency's evaluation does not render the evaluation unreasonable. Kaman Sciences Corporation, B-190143, February 10, 1978, 78-1 CPD 117.

Here, the agency and the protester disagree as to whether potential problems in the cited areas were

adequately addressed in the protester's proposal. Based on our review of the proposals (all of which responded to an evaluation subfactor entitled "Anticipated Problems and Solutions Proposed"), the evaluation record, and Ocean Data's contentions, we find the agency's technical conclusions to be reasonable.

Price Evaluation

The protester asserts that its price was improperly determined to be unrealistic and that the resulting evaluation scoring for price was inconsistent with the RFP evaluation criteria. We do not agree.

The Navy explains that its source selection plan, adopted for the procurement prior to receipt of proposals, called for point scoring proposals on both technical aspects and price, with price to receive a maximum of 30 points. The plan further provided that excessively high price proposals should not be awarded points for price, and that a price 50 percent higher than the low realistic price would be considered excessively high. The Navy further explains that it decided to base its point scoring on the low realistic price, rather than the low offered price, because an offered unrealistic price could result in no points being awarded for realistic prices if they were 50 percent higher than the unrealistic price. Under the Navy's scoring scheme, then, the low realistic price was to receive 30 points, while other prices that did not exceed the evaluation ceiling were to receive proportionately lower scores.

Given this scoring/evaluation approach, the Navy's interest in determining price realism, even though a fixed-price rather than a cost-reimbursement contract was to be awarded, is understandable. Moreover, the Navy's price realism analysis appears to be reasonable. The Navy prepared a "Should Cost" estimate, breaking down the total buy into four major cost elements, and compared the protester's pricing for each element to that estimate. It also compared the protester's pricing to the average pricing received. That comparison showed that in each category of cost Ocean Data's pricing was significantly lower--by a range of 24 to 67 percent--than the Navy's estimate, and overall was 47 percent lower than the estimate. It was also substantially lower than the average of the pricing received.

Ocean Data argues that its proposed price of \$1,000,689 was realistic. It notes that in procurements of this type,

which have been made on a sole-source basis for a number of years, it is not uncommon for the low offeror's price under the initial competitive procurement to be substantially lower than the Government estimate. Further, the protester argues that its low price was primarily due to its low wage, overhead and profit rates and to its prior experience in connection with a related item. The protester also maintains that it was able to incur significant savings because it proposed to use its own detector and many of its own products.

The protester may indeed believe that it could have met the contract requirements at its offered price and that its price was realistic for the effort involved. On the other hand, even though all but one proposed price was below the Navy's estimate, we think the Navy acted reasonably in viewing Ocean Data's price, which was less than half of the Navy's estimate and which was exceeded by every other proposed price by at least 80 percent, as unrealistic. Such realism determinations are necessarily judgmental, and unless they are clearly unreasonable they are not subject to objection. See generally Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD 325 (involving a cost realism analysis). Since the record does not establish that the realism determination was clearly unreasonable, we cannot object to it.

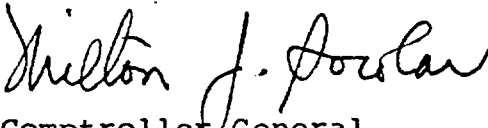
Ocean Data's second point is that despite the RFP indication that price would be evaluated and carry some weight, the scoring method used eliminated price as an evaluation criterion because it resulted in equal scores for Ocean Data and the awardee, even though the latter's price was more than \$875,000 higher. We would certainly agree with Ocean Data's point if its price had been viewed as a viable one, since in that case consideration of price effectively would have been nullified in the evaluation. Under the circumstances, however, we think the Navy's approach here was appropriate.

We have pointed out in several cases that when price or cost is to be given a point score in proposal evaluation, agencies must guard against a misleading result that can be brought about by such things as including in the scoring proposals that have no reasonable chance for award and are priced very low or proposals which offer a very high price. See, e.g., Umpqua Research Company, B-199014, April 3, 1981, 81-1 CPD 254; First Ann Arbor Corporation, B-194519, March 4, 1980, 80-1 CPD 170; Francis & Jackson, Associates, 57 Comp. Gen. 244 (1978) 78-1 CPD 79. Here, we

think the Navy's approach of not basing its point scores on what it could reasonably view as an unrealistic price proposal is consistent with that guidance. We note, for example, that if Ocean Data's price has been used as the base for the price scoring, none of the other offerors would have received any points for price since their prices all exceed Ocean Data's price by more than 50 percent. That would have had the effect of making Ocean Data's proposal the highest-scored offer, even though from a technical standpoint, which counted for far more than price, it was the weakest. Arguably, in view of Ocean Data's low technical score, the Navy could have eliminated that firm from the competitive range prior to scoring prices; the approach used here accomplished the same purpose with respect to preserving the integrity of the scoring approach, and at the same time retained Ocean Data in the competition. Thus, we think Ocean Data in effect benefited, rather than suffered harm, from what was done here.

Moreover, we fail to see how price was eliminated as a criterion. Ocean Data was given 30 points for price, and, consistent with our holdings that point scores, except where a solicitation specifically so provides, do not dictate the awardee, see Telecommunications Management Corp., 57 Comp. Gen. 251 (1978), 78-1 CPD 80, the Navy specifically considered whether the technical advantage of the ASD proposal warranted the additional expenditure. Only when it concluded that it was did the award go to ASD.

The protest is dismissed in part and denied in part.

for 
Comptroller General
of the United States